



## 2009 Legislature Adjournment

The official sine die adjournment of the 2009 Legislative Session occurred on Sunday, April 26, at 5:55 AM. Legislators finalized a General Fund budget of \$5.768 billion for FY 2010, which begins on July 1, 2009. The General Fund consists of taxpayer funds paid to the State in the form of income, sales, corporate, and other taxes. The Governor, the Legislature, and State agencies had to make difficult decisions this Session in order to downsize the State's budget by 6% in response to a weakening State economy that is predicted to not bottom out for another year.



I remember pulling out of the parking lot on the last night of Session in the middle of a heavy downpour with lightning flashing and thunder booming and thinking that it wasn't an altogether inappropriate response to the end of the 2009 Session. I wished I was in a movie so I could drive through the gate and splinter it. I was clutching my right side, thinking I had the worst case of perpetual indigestion that any human had ever endured. I said goodbye to my old friends at the Capitol and wound up saying the same to my appendix about 24 hours later.



An appendix is a lot like some State government employment policies that we all endure – no one really knows the purpose they serve, but they're there. The difference is that when an appendix gets irritating we remove it and toss it on the biohazard pile. They tell me when I woke up in recovery I kept asking the nurses over and over again if the Legislature was done and was very upset when they didn't understand me. They said I passed the dedication test, which apparently is measured by how one inquires about their job under four parts delirium and three parts exhaustion.

The pages that follow summarize the highlights of the 2009 Session for the Department. I'm not one to borrow trouble from the future, but all indicators are that my gall bladder may be the next casualty as the 2010 Session is slated to be even rockier. It was a pleasure to work with everyone involved with aging issues during the 2009 Session. Please note my email address at the top of the page and if you have questions during

the Interim, please contact me. I will begin publishing the *Legislative Update* again in January 2010.

## 2009 Session – Bills of Interest

The Department monitored over 50 pieces of legislation during the 2009 Session. The major ones that made it through the entire process are listed in the table below with summaries that follow. The enrolled versions of these bills may be accessed on the General Assembly's web site at: [www.legis.state.ia.us](http://www.legis.state.ia.us)

HF 811	Health and Human Services Appropriations	Signed by Governor	5/26/2009
HF 820	Federal Block Grant & Stimulus Appropriations	Signed by Governor	5/26/2009
SF 204	Department Changes	Signed by Governor	3/25/2009
SF 438	Dependent Adult Abuse	Signed by Governor	5/18/2009
SF 291	Certified Retirement Communities	Signed by Governor	5/26/2009
SF 433	Nursing Facility Citations	Signed by Governor	5/26/2009
SF 476	Nursing Facility Assessment	Signed by Governor	5/26/2009
SF 484	Boarding Home Regulation	Signed by Governor	5/22/2009

## HF 811 – Health and Human Services Appropriations Act

The Governor item-vetoed and signed HF 811 (FY 2010 Health and Human Services Appropriations Act) on May 26. The Department receives a \$5.0 million General Fund appropriation, a net decrease of \$316,214 compared to estimated FY 2009. In addition, the Department receives \$8.5 million from the Senior Living Trust Fund, which is no change compared to estimated FY 2009.

Every program and service in this budget has an organized constituency behind it that doesn't want a reduction. The trip from A to Z that shaped this budget was complex, numbers fluctuated, and eventually reductions were settled. If you have questions about what happened between A and Z, please let me know. Everyone knew going into budget negotiations that FY 2010 was going to look different from FY 2009 when it was over and it does.

The net decrease to the Department's General Fund appropriation provided in HF 811 is due to a combination of increases and decreases outlined below that will impact the Department's budget beginning on July 1, 2009:

- An increase of \$110,135 to replace savings identified in FY 2009.
- An increase of \$220,000 for unmet home and community-based service needs.
- A decrease of \$200,000 and 1.0 FTE position for the Aging and Disability Resource Center (ADRC).
- A decrease of \$250,000 and 2.0 FTE positions for the Office of Substitute Decision Maker (SDM).
- A decrease of \$82,112 for Area Agency on Aging (AAA) Administration.
- A decrease of \$75,000 for the public awareness campaign.
- A decrease of \$20,237 for the Retired Senior Volunteer Program (RSVP).
- A decrease of \$19,000 for AAA Board training.

Other highlights of HF 811 that impact the Department and the aging network include:

- Transfers \$1.4 million of the Department's General Fund appropriation to Medicaid to provide State match for case management services under the Elderly Waiver. This is no change compared to the current fiscal year.
- Requires the monthly per client cap on case management services remain at \$70 unless the DHS adopts rules to revise the reimbursement methodology to include 15-minute units.
- Requires the DHS to review projections for State funding expenditures for case management services under the Elderly Waiver on a quarterly basis.
- Requires the Department to continue the Elder Abuse Prevention Initiative.
- Allocates \$220,000 from the Department's General Fund appropriation be used to meet unmet home and community-based service needs.
- Continues the Accountability Measures Workgroup in order to develop recommendations to design a quality improvement process for targeted nursing facilities by July 1, 2010.
- Transfers \$1.0 million of the Department's Senior Living Trust Fund appropriation to Medicaid to provide State match for case management services under the Elderly Waiver. This is no change compared to the current fiscal year.
- Appropriates \$200,000 to the Department from the Health Care Transformation Account (HCTA) to re-program the SEAMLESS computer system. This is a new appropriation for FY 2010.

- Requires the Department of Public Health to transfer \$222,870 to the Department from the Health Care Trust Fund (HCTF) appropriation to be used for unmet home and community-based service needs.
- Permits the Department to carry forward up to \$216,242 in leftover funds from the FY 2009 SLTF appropriation to be used as match for the Nutrition and Senior Internship Programs funds received under the federal ARRA.
- Eliminates the Senior Living Coordinating Unit and permits the Director of the Department of Elder Affairs to convene meetings on the long-term care living system with the Directors of the Departments of Public Health, Inspections and Appeals, and Human Services on an as needed basis.

### **SF 204 – Department Changes Act**

The Governor signed SF 204 (Department Changes Act) on March 25. The Act makes various changes to Code language for programs under the purview of the Department in order to clarify responsibilities for certain programs, modernize language, and conform to references used in the federal Older Americans Act.

The Act authorized name changes for the Department and its Commission. Effective July 1, 2009, the Department will become the Iowa Department on Aging (IDA) and the Commission will be known as the Commission on Aging.

### **SF 484 – Boarding Home Regulation Act**

The Governor signed SF 484 (Boarding Home Regulation Act) on May 22. The Act was part of an on-going response to the condition of an unsafe boarding home that housed several mentally disabled men in an Eastern Iowa town who were employed by an out-of-state turkey processor that paid them below minimum wage.

The Act includes the preliminary recommendations of the Governor's Task Force on Dependent Adult Abuse and increases State oversight of employers who are permitted to pay below the minimum wage; increases reporting requirements and State inspections of boarding homes; and provides funding from the Medicaid Fraud Account to provide for these requirements.

The Task Force will continue to hold meetings to discuss the State's processes and laws related to dependent adult abuse with the next meeting scheduled for July 6 in Des

Moines. The Legislature's Government Oversight Committee is also expected to continue hearings on the issue this Interim.

### **SF 438 – Dependent Adult Abuse Protection Act**

The Governor signed SF 438 (Dependent Adult Abuse Protection Act) on May 18. The Act created additional protection from exploitation for dependent adults by changing the definition of "sexual exploitation" of a dependent adult to include inappropriate electronic images of dependent adults by caretakers. The Act exempts caretakers who use these images as a necessary part of diagnosis or treatment.

The Act also removes the element of sexual arousal or desire from the definition of "sexual exploitation" to better protect dependent adults from abuse by caretakers, such as when a caretaker may take inappropriate photos to degrade a dependent adult. The Act sets out civil procedures and information for filing a petition when a caregiver is refusing to allow services to a dependent adult and allows for penalties if the abuse is intentional or knowingly done.

### **HF 820 – Federal Block Grant and Stimulus Appropriations Act**

The Governor signed HF 820 (Federal Block Grant and Stimulus Appropriations Act) on May 26. The Act authorizes State agencies to receive and distribute regular federal funds and grants and also appropriates federal funds received under the American Recovery and Reinvestment Act (ARRA). Some items that may of interest to the aging network are outlined below:

- Appropriates \$36.8 million to the Department of Human Rights, Division of Community Action Agencies, in regular funds for the Low-Income Home Energy Assistance Program (LIHEAP).
- Appropriates \$400,000 to the Department of Inspections and Appeals for health facility and dependent adult investigations, which offsets a General Fund reduction.
- Appropriates \$700,000 to the Department of Public Health for Elderly Wellness, which offsets a General Fund reduction.
- Allocates \$6.0 million appropriated for Medicaid to be used for rebasing nursing facilities.

- Appropriates \$400,000 for a demonstration project that provides health care coverage premium assistance for direct care workers to implement recommendations in the Health Care Reform Act passed in 2008.

### **SF 291 – Certified Retirement Communities Act**

The Governor signed SF 291 (Certified Retirement Communities Act) on May 26. The Act established a Certified Retirement Communities Program within the Department of Elder Affairs, but permits implementation to be delayed if resources are not available in FY 2010.

The Department does not anticipate implementing the Program in FY 2010 due to a lack of resources. It is estimated that the Program will generate about \$35,000 in fees after implementation begins; however, an additional \$35,000 will be needed to get the Program operational in order to begin generating fees.

### **HF 712 – Consumer Fraud Protection Act**

The Governor signed HF 712 (Consumer Fraud Protection Act) on May 26. Iowa joined the other 49 states that allow consumers “private right of action,” or the ability to go to Court to try and recoup their money when they have been deceived about a product or service.

The Act also permits consumers to collect attorney fees if they win their case, and if the Court finds the behavior of the accused to be egregious or that it exhibited a disregard for the safety of others, it may award up to three times the amount of actual damages.

### **SF 476 – Nursing Facility Assessment Act**

The Governor signed SF 476 (Nursing Facility Assessment Act) on May 26. The Act imposes a 3% quality assurance assessment (tax) on nursing facilities for each patient day. The assessment will be applied to all for-profit and non-profit private nursing facilities, but not those that are government-owned.

The Act requires the DHS to submit certain requests to the federal Center for Medicare and Medicaid Services (CMS) by June 30, 2009, unless it is determined that the request would adversely impact the existing IowaCare Waiver. The implementation of the quality assurance assessment is contingent on approval of all requests submitted to the CMS.

The revenue estimated to be received under the assessment, if implemented, is estimated to be \$33.0 million annually, which is to be deposited into the Quality Assurance Trust Fund beginning in FY 2010. The State portion of nursing facility reimbursements to be paid from the Fund is estimated at \$19.6 million, with a net gain to the Fund of \$13.4 million. The money in the Fund is to be used to provide a supplemental payment, matched with federal financial participation, for nursing facilities, which is intended to offset the cost of the assessment and pay for a \$10 per bed day rate add-on.

### **SF 433 – Nursing Facility Citations Act**

The Governor signed SF 433 (Nursing Facility Citations Act) on May 26. The Act relates to the classification and assessment of violations in health care facilities and assisted living programs.

### **Thank You**

I want to thank everyone who assisted me during the 2009 Session, including Director McCalley and Department staff. I am particularly grateful for the advice and friendship of fellow lobbyists Amy Campbell, Anthony Carroll, Molly Kottmeyer, Craig Patterson, Lynh Patterson, and Rik Shannon.

Also, thank you to the legislative staff who work long hours to keep things moving during Session, including John Pollak, Patty Funaro, Jess Benson, Deborah Helsen, and Sue Lerdal, and the House and Senate caucus staff members, Kris Bell, Pete Matthes, Zeke Furlong, and Brad Trow.

### **Administrative Rules Process**

The Department maintains a Rules Docket that lists all rule changes that are in process for the Department, from the time notice of the proposed rule is submitted to the Governor's Office through the month when the rule change takes effect. You may access the Rules Docket on the Department's web site [here](#).

The average Iowan has a decent understanding of the legislative process and how a bill becomes law, but the development of administrative rules and the process that governs it is something that government instructors could spend more time on during civics lessons.

When legislation is enacted into statute, administrative rules are often written by State agencies to define and describe how the statute will be enforced. To be lawful a rule must be within the statutory authority of the agency, it must have completed the required rule making process, and be reasonable.

The rule making process is set out in the Code under Chapter 17A and serves four basic functions:

- Requires agencies to publish a notice detailing their intention to adopt a new rule or revise an existing one.
- Provides the public with an opportunity to offer comments on rule proposals.
- Provides the Governor and the Legislature with a limited opportunity to exercise oversight of the rule making process.
- Provides a publication to widely distribute final rules.

The entire rule making process takes at least 108 days (unless a rule is adopted on an emergency basis) and it's easy to get confused somewhere between the notice period and the adoption and publication period.

The Department's Commission must approve rules before we can file a Notice of Intended Action. Once this approval is received, the Department submits the Notice to the Governor's Office and the Administrative Rules Coordinator. There is usually about a 19-day delay before the rules are published in the Iowa Administrative Bulletin (IAB) to allow for edits from the Code Editor's Office.

Once the rules are published in the IAB, there is a 35-day notice period, which includes a period to receive public comments. If you want to submit comments on rules, you need to base your comments on the official version that is published in the IAB and submit them during the specified public comment period. The Department may make changes based on comments that are received.

When the notice period is over, the adoption and publication period begins, which is a very similar process (sans the public comment period) and that's where people generally get confused about the process. Again, the Department must get approval from the Department's Commission to file the rules (whether they are the same or have been changed based on comments received) for adoption and publication. The rules must then be filed and published in the IAB as adopted with a 35-day publication period that gives stakeholders time to make adjustments. When this time has elapsed, the rules become effective.

Hopefully, this provides some insight into a process that can be confusing from time to time. The Department's Legislative Liaison also serves as the Administrative Rules Coordinator so if you ever have questions about the Department's rules, please email me and I'll do my best to assist you.

## **World Elder Abuse Awareness Day**

World Elder Abuse Awareness Day is June 15, 2009. Information about abuse, neglect, and financial exploitation in later life will be available at each of the 14 "Plan While You Can" Sessions that will be held at various locations across the State. Assistance in completing Powers of Attorney and Living Wills will also be available. For information on attending a training session near you, access the Department's web site [here](#) or call 800-532-3213 for more information.

## **Update on Long-Term Care Public Education Campaign**

The Department receives calls and correspondence on a frequent basis from older individuals and family members who did not think about their future long-term care service needs and are having to make tough decisions in times of crisis. This lack of planning and awareness about long-term care options can lead Iowans to more costly forms of long-term care services when compared to available home and community-based services that would enable them to remain in their own homes for as long as possible.

The Department recently implemented a Long-Term Care Public Education Campaign designed to educate and promote a variety of long-term care services that are available to older Iowans as they plan for their future. The Campaign was possible due to a provision in HF 2539 (Health Care Reform Act) that was enacted during the 2008 Legislative Session and included radio and newspaper ads, as well as a 129,000-piece mailing that went to the homes of older Iowans. The response to the Campaign has been about 80% greater than expected. As of June 2, 2009, the Department had received 2,103 requests for long-term service and support kits.

## **Ageing & Action Forum**

The Ageing & Action Forum: Partnering through Hard Times was held on May 13, 2009, in Des Moines to hear from older Iowans about the issues they are facing in today's

difficult economy and ways that State and federal policymakers can respond to their unique needs during the recession and beyond.

The Forum featured keynote presentations from officials from the U.S. Administration on Aging and the University of Northern Iowa Center for Social and Behavioral Research. State Senator Jack Hatch was in attendance. Participants worked in small groups to identify policy priorities on Healthcare and Long-Term Living Services; Housing and Transportation; Employment; and Elder Abuse and Fraud. The following are a few highlights from the discussions about what older Iowans need and want:

- Access to and information about affordable housing options with local agencies working together to solve these issues.
- Flexible employment because they need more money to live on and want to continue community connections.
- Ability to live independently, but need assistance in navigating the complicated network of health and long-term services and supports already in existence.
- Local assistance to resolve mobility issues, such as improved road design to assist older drivers or individualized options that augment public transportation services so they can remain in their own homes and communities longer.
- Access to legal assistance that will protect them from fraud and abuse that targets older Iowans.

## Upcoming Meetings

### Dependent Adult Abuse Task Force

Monday, July 6, 2009

Parker Building, Grant Conference Room

Des Moines

1:30 – 3:30 PM

### Commission for the Department of Elder Affairs

Tuesday & Wednesday, June 16-17, 2009

Holiday Inn Downtown – Mercy Campus, Northview Room

Des Moines

9:00 AM – 4:30 PM (T), 9:00 AM – 12:30 PM (W)

**Disclaimer**

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The mission of the Iowa Department of Elder Affairs (IDEA) is to provide advocacy, educational, and prevention services to help Iowans remain independent as they age. The IDEA provides over \$30 million in services through a network of 13 Area Agencies on Aging across the State. For more information on the IDEA, visit: [www.state.ia.us/elderaffairs](http://www.state.ia.us/elderaffairs). To locate resources for older adults and people with disabilities, visit: [www.lifelonglinks.org](http://www.lifelonglinks.org).